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Board of Democracy Prep at the Agassi Campus, Natasha
Trivers, Adam Johnson, Kathryn Bass, Joseph Morgan,
PhD, and Kimberly Wall*

18 **UNITED STATES DISTRICT COURT**

19 **DISTRICT OF NEVADA**

21 GABRIELLE CLARK, individually and as parent
and guardian of WILLIAM CLARK, and
22 WILLIAM CLARK, individually,

23 Plaintiffs,

24 vs.

25 STATE PUBLIC CHARTER SCHOOL
AUTHORITY, DEMOCRACY PREP PUBLIC
26 SCHOOLS, DEMOCRACY PREP PUBLIC
SCHOOLS, INC., DEMOCRACY PREP at the
27 AGASSI CAMPUS, DEMOCRACY PREP
NEVADA LLC, SCHOOL BOARD of Democracy
Prep at the Agassi Campus, NATASHA TRIVERS,

CASE NO.: 2:20-cv-02324-APG-VCF

**DEFENDANTS' MOTION TO SEAL
EXHIBIT IN SUPPORT OF NOTICE OF
INTERVENING DEVELOPMENT
REGARDING PRELIMINARY
INJUNCTION HEARING AND FOR
APPROVAL OF LIMITED REDACTIONS**

1 individually and in her official capacity as
 2 Superintendent and CEO, ADAM JOHNSON,
 3 individually and in his official capacity as Executive
 4 Director and Principal, KATHRYN BASS,
 5 individually and in her capacity as Teacher,
 JOSEPH MORGAN, individually and in his official
 capacity as Board Chair, KIMBERLY WALL,
 individually and in her capacity as assistant
 superintendent, and John & Jane Does 1-20,

6 Defendants.

7
 8 Defendants Democracy Prep Public Schools, Democracy Prep Public Schools, Inc., Democracy
 9 Prep at the Agassi Campus, Democracy Prep Nevada LLC, School Board of Democracy Prep at the Agassi
 10 Campus, Natasha Trivers, Adam Johnson, Kathryn Bass, Joseph Morgan, PhD, and Kimberly Wall (the
 11 “Defendants”), by and through their undersigned counsel of record, GREENBERG TRAURIG, LLP, and
 12 WILMER CUTLER PICKERING HALE AND DORR LLP, hereby submit this Motion to Seal Exhibit
 13 A to the April 9, 2021 Notice of Intervening Development Regarding Preliminary Injunction Hearing
 14 (“Notice”), and to redact corresponding portions of the Notice.

15 This Motion is based upon the pleadings on file herein, the attached memorandum of points and
 16 authorities, and any oral argument the Court may permit at the hearing of this matter.

17 **BACKGROUND**

18 This case was brought on behalf of William Clark and his mother, Gabrielle Clark, and concerns
 19 the curriculum taught at Democracy Prep at the Agassi Campus. On January 15, 2021, Plaintiffs filed a
 20 Motion for Preliminary Injunction and Temporary Restraining Order. On February 25, 2021, the Court
 21 denied the Temporary Restraining Order. [ECF No. 61] A hearing on Plaintiffs’ remaining application
 22 for a Preliminary Injunction is scheduled before this Court on April 14, 2021, at 9:00 a.m. by
 23 videoconference. [ECF No. 71]

24 Defendants write to notify the Court that they have provided Plaintiff William Clark with the
 25 injunctive relief he seeks. As part of that Notice of Intervening Development Regarding Preliminary
 26 Injunction Hearing (“Notice”), Defendants now include the letter addressed to William Clark
 27 documenting this relief, which has been included as Exhibit A to the Notice and contains private student
 28 information throughout. Private student information from that letter is also referenced in the

1 corresponding Notice. Consequently, Defendants are seeking to file Exhibit A to the Notice under seal,
 2 and to redact the references to that private information from the Notice itself.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 While courts recognize a general right to “inspect and copy public records and documents,
 5 including judicial records and documents,” access to judicial records is not absolute. *Nixon v. Warner*
 6 *Communs., Inc.*, 435 U.S. 589, 597 n.7 (1978). “[T]he court may order that a filing be made under seal
 7 without redaction.” *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).
 8 If the motion is dispositive, the movant seeking to seal documents must show “compelling reasons” for
 9 sealing judicial records. *Id.* at 1179-80. If the motion is non-dispositive, the moving party must only
 10 have “good cause” for sealing judicial records. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d
 11 1092, 1097 (9th Cir. 2016). Even “routine” motions can be treated as dispositive if they are “more than
 12 tangentially related to the merits” of the underlying cause of action. *Id.* 1097-1100; *Gable v. Washington*
 13 *Corr. Ctr. for Women*, 2018 WL 5295809, at *3 (W.D. Wash. Oct. 25, 2018).

14 Here, preserving the privacy of student information constitutes both “good cause” and a
 15 “compelling reason” to file the exhibit under seal and redact the information from the Notice itself. *See*
 16 *Kamakana*, 447 F.3d at 1178. And under the Family Educational Rights and Privacy Act, student
 17 educational records constitute confidential and private material. 12 U.S.C. § 1232(g).

18 Moreover, redaction and filing under seal is appropriate because the documents contain
 19 confidential and sensitive personal information regarding a student. The entirety of Exhibit A to the
 20 Notice documents Democracy Prep’s academic record for a student, and the Notice references that
 21 record. This Court has twice found that similar student information should be filed under seal and
 22 redacted from the corresponding filing: when it was included in Exhibit 10 attached to the declaration
 23 of Christina Bentheim filed in concert with the Plaintiffs’ Motion for Preliminary Injunction and
 24 Temporary Restraining Order; and when it was included in Exhibit J attached to the declaration of Adam
 25 Johnson filed in concert with Defendants’ Response in Opposition to Plaintiffs’ Motion for Preliminary
 26 Injunction and Temporary Restraining Order. ECF Nos. 27 & 52. Sealing the exhibit and redacting that
 27 information thus fulfills a compelling or important privacy interest that outweighs the public interest in
 28 access to the court record.

CONCLUSION

For the above reasons, Defendants submit Exhibit A to the Notice of Intervening Development Regarding Preliminary Injunction Hearing under seal, and redact corresponding information from the Notice itself, and request that the motion be granted.

DATED this 9th day of April, 2021.

GREENBERG TRAURIG, LLP

/s/Kara B. Hendricks

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Kathryn Bass, Joseph Morgan, PhD, and Kimberly
Wall*

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2021, a true and correct copy of the foregoing was filed electronically via the Court's CM/ECF system. Notice of filing will be served on all parties by operation of the Court's EM/ECF system, and parties may access this filing through the Court's CM/ECF system.

/s/ Andrea Flintz

an employee of Greenberg Traurig, LLP

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